IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.13960 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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ADMINISTRATOR / MANAGER - Petitioner
Versus
STATE OF GUJARAT THROUGH COMMISSIONER & ORS. - Respondents

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Appearance :
NOTICE SERVED for Petitioner.
MS TANUJA KACCHCHHI, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Articles 226 & 227 of the Constitution, Mr.Shital

Agrawal, who is Director of Silver Oak Country Club & Resorts Limited, Sola, Sarkhej-Gandhinagar Highway, Ahmedabad, has prayed to set aside notice dated March 16, 1998 by which he was called upon to show cause as to why recovery of entertainment tax of Rs.2,09,637.50ps. should not be made and prosecution should not be lodged for commission of offences punishable under Sections 15 and 16 of the Gujarat Entertainment Tax Act, 1977 ["*the Act*" for short]. The petitioner has prayed to set aside notice dated December 15, 1998, which is not produced on record of the case, but it is evident from the averments made in paragraph 3.1 of the petition that by the said notice, certain mistakes committed while issuing notice dated March 16, 1998 were rectified and the petitioner was called upon to make payment of the entertainment tax mentioned therein. The petitioner has further prayed to set aside order dated December 27, 2000 passed by the Competent Authority & Deputy Commissioner, Entertainment Tax, Gandhinagar, calling upon the petitioner to make payment of Rs.2,11,620/- as amount due and payable under the provisions of the Act. The petitioner has also prayed to set aside the

order dated December 24, 2001 passed by the Collector, Entertainment Tax, by which Appeal No.L.B./Appeal/9/2001 filed by the petitioner was dismissed. The petitioner has also prayed to set aside the revisional order dated April 21, 2006 passed by the Commissioner, Entertainment Tax, Gujarat State, Gandhinagar, by which the appellate order is confirmed.

2. Silver Oak Country Club & Resorts Limited runs a club. It organized a programme named "Welcome Party-1998" on the eve of December 31, 1997. The petitioner had issued tickets to patrons and members of the club at the concessional rate. When the programme was going on, the club-premises of the petitioner was raided by the officers of the Entertainment Tax Department and an inquiry was made as to in which manner the charges were collected by the petitioner. During the course of inquiry, it was learnt that the charges of the ticket collected by the petitioner included dinner charge, but that fact was not mentioned on the tickets whereas it was found that the word '*dinner*' was erased from some of the

tickets. Obviously, the officers were of the opinion that the petitioners had evaded entertainment tax and, therefore, notice dated March 16, 1998 was issued to the petitioner calling upon him to show cause as to why a sum of Rs.2,09,637.50 ps. be not recovered as entertainment tax and the prosecution should not be lodged. The petitioner gave reply dated August 10, 1998. It was realised that while issuing notice dated March 16, 1998, some mistakes were committed in stating the facts and, therefore, another notice dated December 15, 1998 was issued rectifying those mistakes and calling upon the petitioner to pay the amount of tax. The petitioner did not give reply to the said notice. Ultimately, by an order dated December 27, 2000, the Competent Authority & Deputy Commissioner, Entertainment Tax, Gandhinagar, called upon the petitioner to pay a sum of Rs.2,11,620/- being the amount of tax and penalty payable under the provisions of the Act. Feeling aggrieved, the petitioner preferred an appeal before the District Collector & Appointed Authority under the Act. The appeal was dismissed by an order dated December 24, 2001. Feeling aggrieved, the petitioner

filed Revision before the Commissioner, Entertainment Tax, Gujarat State, Gandhinagar, which is dismissed by order dated April 21, 2006.

3. The case of the petitioner is that the respondents were not justified in imposing penalty on the petitioner for non-payment of entertainment tax inasmuch as the record did not indicate that the petitioner was not ready to pay the amount due under the provisions of the Act. According to the petitioner, Section 3-A of the Act provides that certain entertainments are free from tax and as the entertainment arranged on the eve of December 31, 1997 falls within the purview of Clauses (1) & (2) of Schedule III of the Act, the petitioner is not liable to pay tax. What is maintained in the petition is that there was no necessity to take prior permission of the competent authority or maintain statement of accounts relating to the programme arranged by the petitioner on the eve of December 31, 1997 and, therefore, the impugned orders are liable to be set aside. The petitioner has further averred that on January 9, 1998, the petitioner had produced certain

tickets for verification of the authority, but the competent authority had neither recorded statement of any patron nor statement of members to whom the tickets were issued, and as the entire inquiry was based on baseless and vague allegations, the petition should be accepted. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

4. It may be mentioned that the petitioner had moved the instant petition through his learned lawyer Mr.Mrugen Purohit. The petition was placed before the Court for admission hearing on July 21, 2006 and after hearing the learned advocate for the petitioner, notice was issued. Further, in order to see that the respondents were duly served, in addition to normal mode of service, direct service was also permitted. Mr.Mrugen Purohit, learned advocate, on the returnable date, stated before the Court that the petitioner had not turned up in spite of his request to file an affidavit indicating that the respondents were directly served. Therefore, at his instance, the matter was adjourned from time to

time. Ultimately, Mr.Mrugen Purohit, learned advocate, addressed a note dated September 21, 2006 to the Registrar, High Court, seeking leave of the Court to withdraw his appearance from the case. The said note was placed before the Court for appropriate orders and after hearing the learned advocate, the Court permitted the learned advocate to withdraw his appearance from the case by an order dated October 5, 2006. While permitting the learned advocate to withdraw his appearance, the Registry was directed to issue notice to the petitioner calling upon him to make alternative arrangement for his appearance in the matter by the returnable date and informing him that if alternative arrangement was not made on or before returnable date, the petition would be decided by the Court on merits.

5. The record shows that the petitioner is duly served with the said notice, but the petitioner has not made alternative arrangement for appearance in the petition nor has remained present in person nor has filed affidavit indicating that the respondents were duly served, as authorised to him by the Court.

This Court has considered the merits of the petition.

6. From the revisional order, it is evident that before arranging the programme named 'Welcome Party-1998' on the eve of December 31, 1997, the petitioner had not obtained any prior permission from the competent authority. The petitioner has admittedly not paid the amount of tax and penalty due pursuant to order passed by the Competent Authority & Deputy Commissioner, Gandhinagar. The revisional order further indicates that before the revisional authority, the petitioner had agreed to make payment of the amount of tax due, but had not paid the same till the revision was dismissed. The record shows that the tickets issued by the petitioner to the patrons and members of the club to enable them to attend the programme named 'Welcome Party-1998' included dinner charges also whereas on some of the tickets, the word 'diner' was found to be erased. This is a pure finding of fact, which is not liable to interfered with in the petition filed under Article 226 of the Constitution. The case of the petitioner that the programme arranged by him would

fall within Section 3-A of the Act and, therefore, the impugned orders are liable to be set aside, has no substance. A bare reading of the said section does not indicate that when a programme is arranged with dinner, the case would fall under Section 3-A of the Act. On the facts and in the circumstances of the case, this Court is of the opinion that no ground is made out by the petitioner to interfere with the impugned orders. Therefore, the instant petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. The petitioner shall bear the costs of the respondents.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra